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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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AUG 31 2001

In the Matter of)
)
Revision of the Commission's Rules to)
Ensure Compatibility with Enhanced 911)
Emergency Calling Systems)

CC Docket No. 94-102

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Wireless Telecommunications Bureau

SOUTH CANAAN CELLULAR COMMUNICATIONS COMPANY L.P.
PETITION FOR WAIVER OF SECTION 20.18(g) OF THE RULES

South Canaan Cellular Communications Company, L.P. (hereinafter "Petitioner"), by its attorneys and pursuant to Section 1.925 of the Commission's rules, hereby requests a waiver of the enhanced 911 ("E911") Phase II location accuracy provisions in Section 20.18(g) of the Commission's rules. Specifically, Petitioner seeks a waiver of the requirement that carriers selecting a handset-based Phase II E911 solution follow a phased-in implementation schedule beginning October 1, 2001. As set forth below, Petitioner has been unable to obtain commitments from its handset supplier that would allow it to deploy Phase II-compliant handsets in accordance with the Commission's Phase II rules. Petitioner therefore proposes a modified schedule that will permit the deployment of location-capable handsets beginning in the third quarter of 2002. Such a request is consistent with the Commission's goals in this E911 proceeding and is in the public interest.

I. BACKGROUND AND FACTS

Petitioner is a small cellular radiotelephone service licensee which provides wireless telecommunications service in Pennsylvania RSA No. 5. In its Implementation Report filed with

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the Commission on November 7, 2000, Petitioner indicated its intent to employ a hybrid network/handset Phase II E911 solution. Consistent with Section 20.18(g)(2) of the Commission's rules, Petitioner intends to begin providing Phase II location information within 6 months of a PSAP request. Under Section 20.18(g)(1) of the Commission's E911 rules, carriers selecting a handset or hybrid solution must begin selling and activating location-capable handsets by October 1, 2001, regardless of whether a valid PSAP request has been received. The rules further require such carriers to ensure that at least 25% of new handset activations be location capable by December 31, 2001; that 50% of handset activations be location-capable by June 30, 2002; that 100% of new digital handset activations be location-capable by December 31, 2002; and that 95% penetration of location-capable handsets be achieved by December 31, 2005. Despite its intention to fully comply with the Commission's Phase II E911 requirements, Petitioner is simply unable to meet the implementation schedule for the handset component of its hybrid Phase II solution.

As has been demonstrated in the record, ALI-capable handsets are simply not forthcoming from manufacturers in accordance with the Commission's Phase II deployment schedule.^{1/} In addition, as a rural CMRS carrier, Petitioner lacks the size and resources to negotiate directly with handset manufacturers and therefore must rely upon its equipment suppliers to make available all upgrades to its handset technology. As demonstrated herein, Petitioner has been unable to obtain

^{1/} See Leap Wireless International, Inc. Petition for Partial Waiver of E-911 Phase II Implementation Milestones at 13-16 (Aug. 23, 2001); Comments of AT&T Wireless Services, Inc. at 6 (Aug. 20, 2001) (supporting Sprint PCS petition for waiver filed in order to deploy an aided Global Positioning Satellite solution for its CDMA network); Inland Cellular Telephone Co. Petition for Limited Waiver of Sections 20.18(e) and (g) of the Rules at 3 (July 30, 2001) ("Inland Petition"); Qwest Wireless, LLC and TW Wireless, LLC's Petition for Extension of Time or Waiver of Section 20.18 of the Rules at 8 (July 25, 2001) ("Qwest Petition").

a commitment from its supplier to provide location-capable handsets by the Commission's October 1, 2001 deadline for commencing the sale of Phase II-compliant handsets. Accordingly, Petitioner requests that the Commission consider Petitioners to be in compliance with Section 20.18(g) if it begins selling and activating location-capable handsets by the third quarter of 2002, ensures that at least 25 % of new handsets be location-capable by the fourth quarter of 2002, achieves that 50 % benchmark by the third quarter of 2003, the 100 % benchmark by the fourth quarter of 2003, and the 95 % ALI handset penetration benchmark by the second quarter of 2006.

Because Petitioner's request is "specific, focused, and limited in scope, and with a clear path to compliance," waiver of the Commission's October 1, 2001 deadline is warranted.^{2/} Moreover, a handset solution will enable customers to benefit from a superior degree of location precision as location-capable handsets are put into use.^{3/} Accordingly, the requested waiver is in the public interest and should be granted.

II. PETITIONER MEETS THE STANDARD FOR GRANT OF THE REQUESTED WAIVER

Generally, the Commission's rules may be waived when there is good cause shown^{4/} and when "special circumstances warrant a deviation from the general rule, and such a deviation will

^{2/} Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58 (2000) ("Fourth MO&O"); .

^{3/} See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Third Report and Order, 14 FCC Rcd 17388, 17403 (1999) ("Third Report and Order"); ALLTEL Communications, Inc. Petition for Waiver of Sections 20.18(e) and (g) of the Commission's Rules at 30 (July 25, 2001) ("ALLTEL Petition").

^{4/} 47 C.F.R. § 1.3.

serve the public interest.”^{5/} In the context of E911, the Commission has recognized that individual waivers that are “specific, focused and limited in scope, and with a clear path to compliance” may be granted where, due to “technology-related issues” or “exceptional circumstances,” a wireless carrier is unable to meet the October 1, 2001 deadline.^{6/} As explained below, Petitioner’s request satisfies this standard.

First, Petitioner is presenting a waiver request that is specific, focused and limited in scope. The scope of the request is limited to Section 20.18(g)(1). In contrast to other petitions filed in this proceeding, Petitioner does not need to seek a waiver of Section 20.18(f) or 20.18(g)(2), since compliance with those sections is required only after a valid request from a PSAP is received. Having opted for a hybrid solution, Petitioner intends to provide Phase II location information within 6 months of a valid PSAP request for such information as required by Section 20.18(g)(2); Accordingly, Petitioner’s waiver request is narrower than many currently before the Commission.

Second, Petitioner’s request is structured with a “clear path to compliance.” Rather than request a “broad, generalized waiver”^{7/} or an indefinite extension, Petitioner has formulated a proposed schedule that constitutes the best implementation timeline possible within the constraints of its supplier relationships. Specifically, Petitioner would begin selling and activating location-capable handset by the third quarter of 2002 rather than October 1, 2001; the date for the 25 % benchmark would be extended to the fourth quarter of 2002; the date for the 50% benchmark

^{5/} Fourth MO&O at 17457; Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

^{6/} Fourth MO&O at 17457-58.

^{7/} See id.

would be extended to the second quarter of 2003, the date for the 100% benchmark would be extended to the fourth quarter of 2003; and the 95% benchmark for ALI handset penetration would be extended to the second quarter of 2006. This timetable is based on manufacturer estimates of general availability (“GA”) dates ranging from the fourth quarter of 2001 to the second quarter of 2002.^{8/} Indeed, a similar implementation schedule has already been proposed by at least one other carrier facing similar circumstances.^{9/}

Third, despite its efforts to comply with the Commission’s Phase II requirements in a timely fashion, Petitioner has faced technological issues that have hindered its progress. Specifically, Petitioner has been unable to obtain vendor commitments that would allow it to begin selling location-capable handsets by the October 1, 2001 deadline. As a small carrier with a primarily rural subscriber base, Petitioner is not able to negotiate directly with handset manufacturers. As such, it lacks the ability that larger carriers with regional or nationwide footprints might have to demand that manufacturers provide it with the requisite location technology. As Inland Cellular Telephone Co. stated recently in its Phase II waiver request:

Smaller carriers in smaller markets are at the ‘end of the line’ for product distribution. It is accepted industry practice that [General Availability] dates are availability dates for large market carriers only and that small carriers can expect significant delays.^{10/}

Being thus one step further removed from the equipment negotiating process, Petitioner can only deal with intermediaries that will not face regulatory action if Phase II-compliant handsets are not

^{8/} See ALLTEL Petition at 13-14.

^{9/} See Inland Petition at 8.

^{10/} Id. at 6.

forthcoming from manufacturers.^{11/} Under the circumstances, Petitioner has done its best to come as close as possible to meeting the October 1, 2001 deadline by pursuing discussions with its handset suppliers. As demonstrated in the letter attached hereto as Appendix A, Petitioner's handset supplier has confirmed that location-capable handsets will not be available by the October compliance date.

Grant of the requested waiver is in the public interest. The public policy behind the Commission's E911 rules is to meet important public safety needs as quickly as reasonably possible.^{12/} Allowing Petitioner to introduce location-capable handsets on a more graduated schedule would serve this objective. As the Commission has recognized, any delays resulting from a phased-in handset-based approach would likely be offset by the increased accuracy of such solutions.^{13/} In addition to making it possible for Petitioner to provide superior location accuracy, the proposed implementation schedule would have no appreciable effect on the availability of Phase II E911 in Petitioner's service area. While Petitioner intends to continue to cooperate with the PSAPs, the marginal public-interest benefit of introducing location-based handsets by October 1, 2001 would be minimal. Under these circumstances, the implementation timetable proposed herein

^{11/} See Corr Wireless's Consolidated Reply Comments Regarding Its Request for Waiver, CC Docket No. 94-102 at 3-4 (Aug. 6, 2001); Reply Comments of D&E/Omnipoint Wireless Joint Venture, L.P. d/b/a PCS One E-911 Phase II Location Technology Implementation Rules, CC Docket No. 94-102 at 3 (Aug. 6, 2001).

^{12/} See Fourth MO&O, 15 FCC Rcd at 17449.

^{13/} See Third Report and Order, 14 FCC Rcd at 17403 ("Moreover, to the extent that a phase-in might delay [automatic location identification] implementation, handset-based solutions may well generate offsetting benefits. For example, it appears that handset-based solutions may achieve greater accuracy.")

allows for an expeditious and sensible phase-in of Petitioner's handset solution.

III. CONCLUSION

For the reasons set forth above, Petitioner requests a waiver of Section 20.18(g) of the rules. The Commission may contact James Williams, PC Management, 12800 University Drive, Suite 550, Fort Myers, Florida 33907; Phone: 941-335-1347; FAX: 941-335-1339; e-mail: jwilliams@pcmgt.com with any questions regarding this request. Please direct a copy of any written communications to undersigned counsel directly.

Respectfully submitted,

**SOUTH CANAAN CELLULAR
COMMUNICATIONS COMPANY, L.P.**

By: 

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Dated: August 31, 2001

APPENDIX A

Mr. Joseph Schweitzer

General Manager

CellularOne of Northeast Pennsylvania

Route Six Mall

Honesdale, PA 18431

Dear Joe,

In response to your request regarding AL1 capable phones to meet your October 1 E-911 deadline, I regret to inform you that we do not have location-specific phones available at this time, and, will not be able to ship location-specific phones to meet your deadline.

While we cannot commit for the phone manufacturers, it is our understanding that AL1 capable phones that will be compliant with the new E-911 requirements will not be available any time in the near future. As with most new products, we expect that when AL1 phones become available they will be limited in supply and will likely be allocated based upon purchase volumes. There is also likely to be a trial period during which it is determined whether the AL1 phones do in fact, meet the E-911 expectations and requirements.

We appreciate your interest in AL1 capable handsets and will certainly let you know when we have models available for shipment.

Sincerely,



Rudy Belmonte

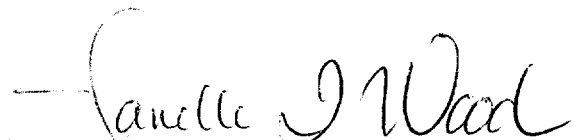
CERTIFICATE OF SERVICE

I, Janelle Wood, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 31st day of August, 2001, sent via hand delivery, a copy of the foregoing PETITION FOR WAIVER OF SECTION 20.189(g) OF THE RULES filed today to the following:

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